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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------------|------------------|
| 10/628,320 | 07/28/2003 | Robert A. Luehrsen | 005345.00007 | 4433 |
| 22908 | 7590 | 01/11/2005 | | |
| BANNER & WITCOFF, LTD. TEN SOUTH WACKER DRIVE SUITE 3000 CHICAGO, IL 60606 | | | | |
| | | | EXAMINER DEVORE, PETER T | |
| | | | ART UNIT 3751 | PAPER NUMBER |

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/628,320 | LUEHRSEN ET AL. | |
| | Examiner | Art Unit | |
| | Peter T deVore | 3751 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Bond.

The Bond reference discloses material bag assembly comprising a compressible material bag 11 with an opening and a bag spout 27.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Isham in view of Runciman/Rios.

The Isham reference discloses a formulation dispenser comprising a material reservoir with a bag 22/101, a valve 102, a supply tube (tube leading from reservoir 102 to valve 102), and a dispense tube 128, and an alternate material reservoir container 22/101, but does not disclose that the material reservoir is a cylinder

(instead it is a box). However, attention is directed to the Runciman and Rios references, which disclose similar material reservoirs with bags wherein the reservoirs are cylinders. It would have been obvious to one of ordinary skill in the art to substitute a cylinder as, for example, taught by the Runciman or Rios references for the box of the Isham device wherein so doing would amount to mere substitution of one functionally equivalent material reservoir with a bag for another within the same art and the selection of any of these material reservoirs with bags would work equally well in the Isham device. Regarding claim 7, the claimed method is inherently performed during the normal use of the modified Isham device.

Claims 2, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Isham in view of Runciman/Rios and Lansdale.

Regarding claim 2, the Isham reference discloses a formulation dispenser comprising a plurality of material reservoirs with bags 22/101 and a supply tube 128, but does not disclose that the material reservoirs are cylinders (instead they are boxes) or that the supply tube leads from all the material reservoirs to a valve. The Isham reference also remains silent as to the details of the dispensing pump 166. However, attention is directed to the Runciman and Rios references, which disclose similar material reservoirs with bags wherein the reservoirs are cylinders. It would have been obvious to one of ordinary skill in the art to substitute cylinders as, for example, taught by the Runciman or Rios references for the boxes of the Isham device wherein so doing would amount to mere substitution of one functionally equivalent material reservoir with a bag for another within the same art and the selection of any of these material

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reservoirs with bags would work equally well in the Isham device. Also, attention is directed to Lansdale reference, which discloses a dispensing pump including a valve 49. It would have been obvious to use a dispensing pump with a valve as taught by Lansdale in the Isham device wherein so doing would be mere selection of one known dispensing pump of the known types of dispensing pumps within the art and the selection of any of these known dispensing pumps would work equally well in the Isham device.

Regarding claims 5 and 6, the Isham reference discloses a formulation dispenser comprising a material reservoir with a bag 22/101, a valve 102, and supply tube (tube leading from reservoir 102 to valve 102), but does not disclose that the material reservoir is a cylinder (instead it is a box) or a dispense tube, dispense valve, and dispense cylinder with piston in the claimed configuration. The Isham reference also remains silent as to the details of the dispensing pump 166. However, attention is directed to the Runciman and Rios references, which disclose similar material reservoirs with bags wherein the reservoirs are cylinders. It would have been obvious to one of ordinary skill in the art to substitute a cylinder as, for example, taught by the Runciman or Rios reference for the box of the Isham device wherein so doing would amount to mere substitution of one functionally equivalent material reservoir with a bag for another within the same art and the selection of any of these material reservoirs with bags would work equally well in the Isham device. Also, attention is directed to Lansdale reference, which discloses a dispensing pump including a dispense tube 46, dispense valve 49, and dispense cylinder 40 with piston 41. It would have been obvious

to use a dispensing pump with a dispense tube, dispense valve, and dispense cylinder as taught by Lansdale in the Isham device wherein so doing would be mere selection of one known dispensing pump of the known types of dispensing pumps within the art and the selection of any of these known dispensing pumps would work equally well in the Isham device.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter T deVore whose telephone number is (703) 306-5481. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (703) 308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pd PJ

Peter T deVore